

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0649, Crew Road Association v. Donald McMullin, the court on September 16, 2005 issued the following order:

The defendant, Donald McMullin, appeals an order of the district court finding him liable for payment of \$475 to the plaintiff, Crew Road Association (association) for his pro rata share of road maintenance expenses. We affirm.

Citing both Tentino v. Locke Lake Colony Ass'n, 120 N.H. 593 (1980), and the association by-laws, the defendant first contends that the association can only demand dues from its voluntary members. In Tentino, we held that a similar association lacked authority to impose a special assessment upon property owners who chose not to join the Locke Lake Colony Association but nevertheless benefited from its common areas. The facts of that case are distinguishable; in Tentino, the predecessor to that association not only represented at the time of sale of the property that the \$15 annual assessment could not be increased, but also filed a report pursuant to the Interstate Land Sales Act of 1969 that it could make no special assessments.

Unlike in Tentino, the deed conveying the property to the defendant in this case specifically stated that it was subject to certain restrictions and conditions. The restriction that is the subject of the current dispute provides that the "right to use Crew Road is made subject to the conditions that the grantees of any lot in this subdivision pay a pro rata share of the expenses of maintaining said road, either directly or through an association of lot owners, if, as, and when the same has been organized and assume the obligation of such expense, and until said road has been accepted as public highway and is maintained by the Town of Wakefield." It is a well-established principle of law that the proper interpretation of a contract, such as a deed, is a question of law for this court. Baker v. McCarthy, 122 N.H. 171, 174-75 (1982). Even if the language of the association's by-laws when read in isolation might be construed to indicate that membership is voluntary, when read in conjunction with the deed restriction, it is clear that the defendant was required to pay his pro rata share of the road maintenance expenses through the association once it was formed, an obligation that was imposed at the time he purchased his property. Contrary to the defendant's assertion, the deed restriction contains no language indicating that an in-kind contribution would satisfy his liability for those expenses.

Finally, the defendant argues that because he was not advised of the association meetings, he has no liability for the maintenance assessments. The record reflects that he admitted receiving the bills for the maintenance assessments. It does not indicate that he ever requested information about the meetings. Having been informed at the time of his purchase that he was liable for his pro rata share of the expenses and having admitted that he received bills for those assessments, the defendant's claim of error must fail.

Affirmed.

NADEAU, DALIANIS and DUGGAN, JJ., concurred.

Eileen Fox
Clerk